



December 5, 2019

**VIA ELECTRONIC FILING**

Mr. Josh Minges, Esquire  
Hearing Examiner  
The Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, South Carolina 29210

**RE:** Jimmy Berry v. Dominion Energy South Carolina, Inc.  
Docket No. 2019-358-E  
Answer and Motion to Dismiss of Dominion Energy South Carolina, Inc.

Dear Mr. Minges:

On November 20, 2019, Mr. Jimmy Berry filed a complaint with the Public Service Commission of South Carolina ("Commission"). Dominion Energy South Carolina, Inc. ("DESC") hereby responds to the complaint and respectfully moves that the Commission dismiss Mr. Berry's complaint on the ground that he has failed to state a claim upon which relief can be granted and alternatively on the ground that the Commission lacks jurisdiction to grant the relief requested. While the Commission is considering this motion to dismiss, the DESC requests that the Commission toll the hearing date and the deadlines for filing direct testimony in the above-referenced docket.

**Mr. Berry's Complaint**

On October 25, 2019, a third party company<sup>1</sup> was "burying orange pipe" and cut the buried DESC gas line servicing Mr. Berry's residence at 223 Old Chapin Road in Lexington, South Carolina. Mr. Berry alleges that DESC performed underground work to fix the buried gas line, and, in the process of those repairs, "[h]is driveway was damaged," "[a] water line cut," and his "power was turned off" and "[w]hen the power came back, sparks flew out [his] outlets at both ends of the house," damaging among other things his spa. Mr. Berry's complaint notes that Dominion, upon investigation, determined the electrical damages at Mr. Berry's residence did not result from any work done by DESC during the repairs. Rather, the power outage resulted from damage caused by squirrels chewing the system neutral at the residence.

The sole relief sought in the complaint is for the Commission to award monetary damages to Mr. Berry. He seeks an award in the amount of the "actual cost to repair and replace damages and spa if unrepairable." Mr. Berry claims out-of-pocket-repair costs of \$288.00 for an electrician,

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<sup>1</sup> Mr. Berry alleges the third-party company burying the orange fiber conduit was Foremost Pipeline. However, that cannot be the case because Foremost does not bury orange fiber conduit. Other third-party entities would bury orange fiber conduit.

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\$63.13 for supplies from Walmart, \$157.91 for supplies from Lowe's Home Centers, LLC, and \$35.42 for materials from The Home Depot.

**Further allegations by Mr. Berry**

Mr. Berry and DESC had other communications regarding the allegations. On October 28, 2019, Mr. Berry asserted his belief that his electric service line was underground at the location of where DESC performed repairs to the underground gas line located near the intersection of his driveway and Old Chapin Road ("Repair Location") and that DESC cut this electric service line as it performed the repairs. In a later call on November 4, 2019, Mr. Berry further alleged that DESC cut off his electric power during the underground repairs and sent high voltage into his home, which resulted in the damage to the spa.

**DESC's Answer and Motion to Dismiss**

DESC denies any allegations of wrongdoing in the complaint, and all statements or allegations in the complaint that are not specifically admitted in this Answer and Motion are expressly denied. DESC further denies any and all allegations made by Mr. Berry orally or in any other form to DESC that are not contained in the written complaint. DESC asserts that the complaint should be dismissed because Mr. Berry fails to allege a violation of any applicable statute, law, regulation, or order within the Commission's jurisdiction. Moreover, the complaint requires dismissal because the Commission lacks the jurisdiction to award the monetary damages sought by Mr. Berry.

After the alleged power outage, Mr. Berry contacted DESC to discuss the matter. DESC conducted an investigation and determined the actual facts concerning the power outage to be as set forth herein. On or about October 25, 2019, a third-party cut the DESC gas line during some underground work on orange fiber conduit. DESC promptly repaired the cut gas line. Contrary to Mr. Berry's assertions otherwise, at no time during the repair work did DESC turn Mr. Berry's power on or off. During the repairs, DESC did accidentally cut the water line because the Town of Lexington ("Town") was unable to mark that line. The Town, which was onsite while DESC performed its repairs, immediately repaired the damaged water line; no electric line was located on or near the damaged water line. The Company has also since repaired damage to Mr. Berry's driveway that resulted from the repair of the damaged lines.

The repair work for the damaged gas and water lines took place at the Repair Location, identified on the map in Exhibit A by the green circle. DESC's investigation established that no underground electrical line was cut during the repairs. In fact, no underground electrical line exists at the Repair Location. Rather, Mr. Berry's hybrid service line travels *overhead* across the Repair Location to an aboveground transformer pole for hybrid service, identified on Exhibit A by the white circle and located approximately 200 feet from the Repair Location, and then, from that pole, continues underground (as shown by the redline on Exhibit A) to his house, identified by the red marker on Exhibit A. As such, the power outage at Mr. Berry's residence during the repair work was not caused by a cut power line. Put simply, DESC could not have cut an electric service line

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during the repair work, as Mr. Berry believes, because Mr. Berry's service line is located overhead (not underground) at the Repair Location where the underground repairs were being made.

Further, DESC was able to determine the source of Mr. Berry's alleged power fluctuation. The investigation established that the electric outage resulted from a system neutral loss. That loss stemmed from the fact that animals (most likely squirrels) had chewed through the system neutral connection wires. A picture of the chewed system neutral is attached hereto as Exhibit B. In sum, the gas line repair work and electric issues at Mr. Berry's residence are simply not related and certainly were not caused by DESC.

DESC also answers that it lacks sufficient information as to whether Mr. Berry incurred the out-of-pocket costs or damages to his spa or other damages as alleged in the complaint. Those allegations are accordingly denied.

The complaint presents a sole issue, namely that DESC damaged a non-existent underground electrical line during its repairs and that in turn caused damage to his residence. As shown above, those allegations lack any factual support. Critically, Mr. Berry does not and cannot allege that DESC violated any applicable statute, rule, regulation, or order under this Commission's jurisdiction. As such, his complaint is not properly before this Commission and must be dismissed.

However, even if a sufficient allegation had been presented in the complaint, Mr. Berry's complaint still requires dismissal. Mr. Berry only seeks monetary damages as relief. The Commission lacks the jurisdiction or authority necessary to award monetary damages. See Brenda Bryant v. Carolina Water Serv., Inc., Order No. 97-1003, Docket No. 97-358-W (Pub. Serv. Comm'n of S.C. Nov. 24, 1997) ("[T]his Commission has no statutory authority to order the payment of damages."); Bobby Watts v. BellSouth Telecommunications, Inc., Docket No. 95-1201-C, Order No. 96-104 (Pub. Serv. Comm'n of S.C. Mar. 5, 1996) (when the complainant requested a monetary award, the Commission held: "The South Carolina Code of Laws does not allow this Commission to award damages under the circumstances of the case at bar . . . . This Commission has no statutory authority to award such damages."); see also Letter of the South Carolina Office of Regulatory Staff ("ORS") to Ms. Jocelyn G. Boyd, dated November 25, 2019 (stating that "ORS advised Mr. Berry that neither ORS nor the Public Service Commission of South Carolina had jurisdiction to award damages" in this matter). The Commission should dismiss the Complaint on this basis as well.

### **Conclusion**

Based upon the foregoing, DESC respectfully requests that Mr. Berry's complaint be dismissed. DESC further requests that, while the Commission is considering the Company's request, the Commission toll the hearing date and the deadlines for filing testimony for all parties in this docket.

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Moreover, by copy of this letter, we are serving this answer and motion to dismiss and the affidavit of J. David Kibler upon Mr. Berry and as well as counsel for the ORS and enclose a certificate of service to that effect.

By this letter, we are also informing Mr. Berry that, pursuant to Commission Regulation 103-829, his response to this motion is due within ten (10) days after service of the motion. According to our calculations, Mr. Berry's response is due no later than December 16, 2019.

If you have any questions or concerns, please do not hesitate to contact us.

Very truly yours,



Matthew W. Gissendanner

cc: Mr. Jimmy Berry  
Mr. Jeff Nelson, Esquire

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2019-358-E**

**IN RE:** )  
 )  
 Jimmy Berry, )  
 )  
           Complainant/Petitioner, )  
 )  
           v. )  
 )  
 Dominion Energy South Carolina, Inc. )  
 )  
           Defendant/Respondent. )  
 \_\_\_\_\_ )

**AFFIDAVIT**

Personally appeared before me J. David Kibler who, having first been duly sworn, deposes and states as follows:

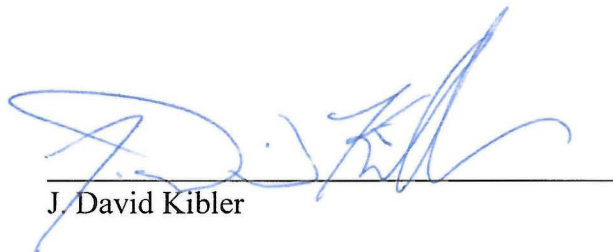
1. My name is J. David Kibler, and I am the Claims Supervisor for Dominion Energy South Carolina, Inc. (“DESC”). Among other things, I am responsible for the supervision of the investigation of general liability claims filed against DESC. I am competent to make this affidavit.

2. This affidavit is based upon my personal knowledge and review of documents received and maintained in the ordinary course of business by DESC. I am familiar with the records of DESC that pertain to Mr. Berry and have personally worked on the documents and records concerning Mr. Berry.

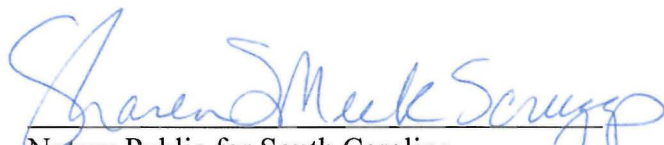
3. I assisted DESC’s attorney in preparing the Answer and Motion to Dismiss dated December 5, 2019, which was filed in response to the complaint of Mr. Berry dated November 20,

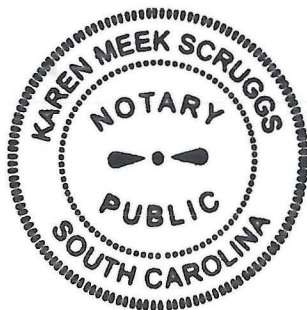
2019. I have read the Answer and Motion to Dismiss and verify that the information contained therein is true and accurate to best of my knowledge, information, and belief.

FURTHER AFFIANT SAYETH NOT.

  
J. David Kibler

Sworn to and subscribed before me  
this 5th day of December, 2019

  
Notary Public for South Carolina  
My Commission Expires: 1/20/26





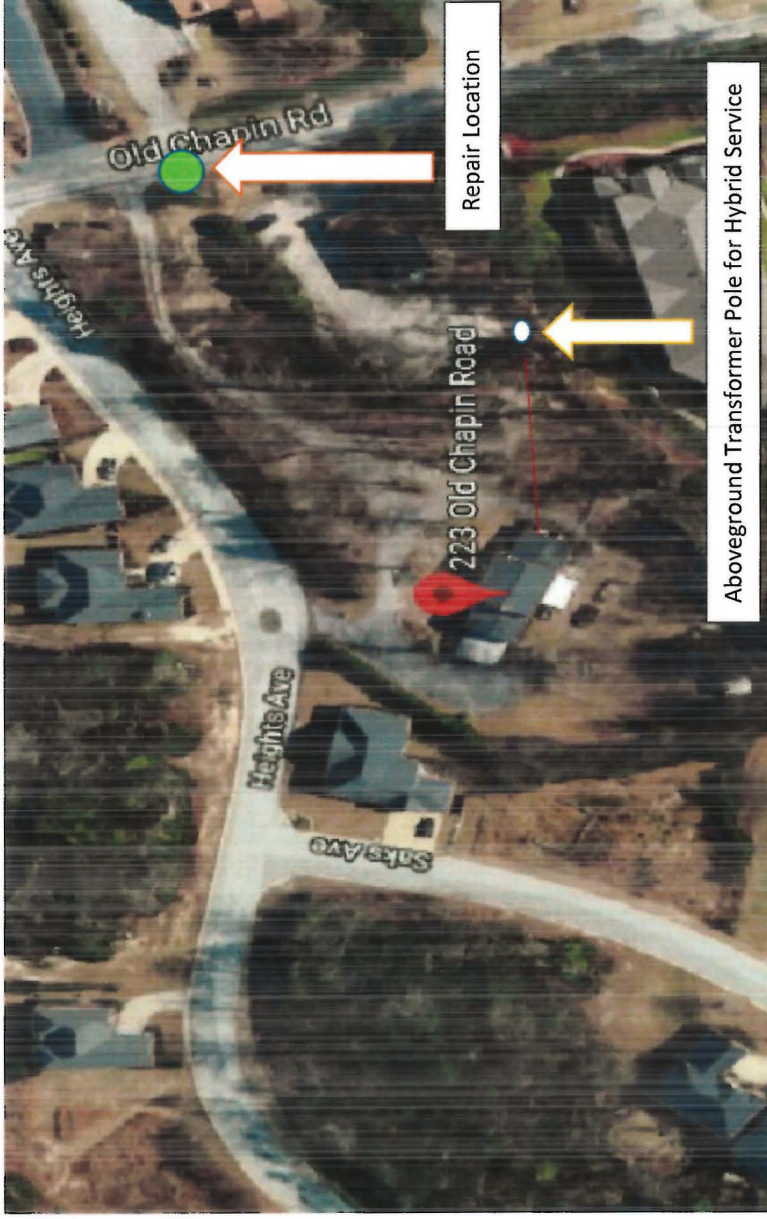


Exhibit A





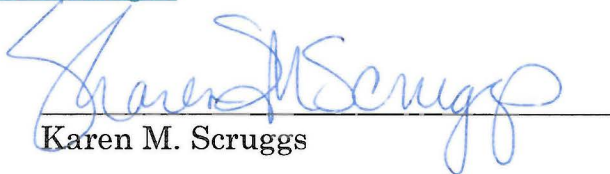
**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2019-358-E**

Jimmy Berry,	)	
	)	
Complainant/Petitioner	)	<b>CERTIFICATE OF</b>
	)	<b>SERVICE</b>
v.	)	
	)	
Dominion Energy South Carolina, Inc.,	)	
	)	
Defendant/Respondent.	)	
_____	)	

This is the certify that I have caused to be served this day one (1) copy of Dominion Energy South Carolina, Inc.'s **Answer and Motion to Dismiss** via electronic mail and U.S. Mail to the persons named below at the addresses listed:

Jimmy Berry  
PO Box 951  
Lexington, SC 29071  
[icl304@windstream.net](mailto:icl304@windstream.net)

Jeffrey M. Nelson, Esquire  
Office of Regulatory Staff  
1401 Main Street, Suite 900  
Columbia, SC 29201  
[jnelson@ors.sc.gov](mailto:jnelson@ors.sc.gov)

  
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Karen M. Scruggs

Cayce, South Carolina  
This 5<sup>th</sup> day of December, 2019